IN THE

Supreme Court of the United States

THE WASHINGTON HOME FOR INCURABLES, A CORPORATION,

vs.

AMERICAN SECURITY AND TRUST COMPANY, A CORPORATION; GARFIELD MEMORIAL HOSPITAL, A CORPORATION; CHILDREN'S HOSPITAL OF THE DISTRICT OF COLUMBIA, A CORPORATION; AND LOTIA L. FRANK.

BRIEF IN SUPPORT OF AN APPLICATION TO THE SUPREME COURT OF THE UNITED STATES FOR THE ALLOWANCE OF AN APPEAL FROM A DECREE OF THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA IN THE ABOVE ENTITLED CAUSE.

This is an application for the allowance of an appeal to the Supreme Court of the United States from the decision of the Court of Appeals of the District of Columbia which was rendered on the 4th day of March, 1912, in an equity cause pending in the Court of Appeals January 1, 1912, and in which the matter in dispute exclusive of costs, exceeds the sum of five thousand dollars.

The application is made under Section 8 of the Act of February 9, 1893, Chapter 74, "An Act to Establish a

Court of Appeals for the District of Columbia, and for other purposes," which is as follows:

> "Sec. 8. That any final judgment or decree of the said Court of Appeals may be re-examined and affirmed, reversed, or modified by the Supreme Court of the United States, upon writ of error or appeal, in all causes in which the matter in dispute, exclusive of costs, shall exceed the sum of five thousand dollars, in the same manner and under the same regulations as heretofore provided for in cases of writs of error on judgment or appeals from decrees rendered in the Supreme Court of the District of Columbia; and also in cases, without regard to the sum or value of the matter in dispute, wherein is involved the validity of any patent or copyright, or in which is drawn in question the validity of a treaty or statute of or an authority exercised under the United States." (27 Stat. L., 436.)

This provision of law has been modified by the enactment of the judicial code of the United States, Act of March 3, 1911, as follows:

> "Sec. 250. Any final judgment or decree of the Court of Appeals of the District of Columbia may be re-examined and affirmed, reversed, or modified by the Supreme Court of the United States, upon writ of error or appeal, in the following cases:
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> First. In cases in which the jurisdiction of the trial court is in issue; but when any such case is not otherwise reviewable in said Supreme Court, then the question of jurisdiction alone shall be certified to said Supreme Court for decision.
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> Second. In prize cases.
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> Third. In cases involving the construction or application of the Constitution of the United States, or the constitutionality of any law of the United States,

or the validity or construction of any treaty made under its authority.

Fourth. In cases in which the constitution, or any law of a State, is claimed to be in contravention of the Constitution of the United States.

Fifth. In cases in which the validity of any authority exercised under the United States, or the existence or scope of any power or duty of an officer of the United States is drawn in question.

Sixth. In cases in which the construction of any law of the United States is drawn in question by the defendant.

Except as provided in the next succeeding section, the judgments and decrees of said Court of Appeals shall be final in all cases arising under the patent laws, the copyright laws, the revenue laws, the criminal laws, and in admiralty cases; and, except as provided in the next succeeding section, the judgment and decrees of said Court of Appeals shall be final in all cases not reviewable as hereinbefore provided.

Writs of error and appeals shall be taken within the same time, in the same manner, and under the same regulations as writs of error and appeals are taken from the circuit courts of appeals to the Supreme Court of the United States."

The judicial code, act of March 3, 1911, by its terms took effect and has been in force, on and after January 1, 1912.

The saving clause of the judicial code, section 299, clearly preserves the right of appeal in this case. Its language would have to be wrested from its evident meaning to bar the appeal.

But our contention is that the petition for an appeal in this case should be granted because of the provision in Section 299 of the judicial code, Act of March 3, 1911, which is as follows:

> **"Sec. 299. The repeal of existing laws, or the amendments thereof, embraced in this Act, shall not affect any act done, or any right accruing or accrued, or any suit or proceeding, including those pending on writ of error, appeal, certificate, or writ of certiorari, in any appellate court referred to or included within, the provisions of this Act, pending at the time of the taking effect of this Act, but all such suits or proceedings, and suits and proceedings for causes arising or acts done prior to such date, may be commenced and prosecuted within the same time, and with the same effect, as if said repeal or amendments had not been made."**

Giving to the language of Section 299 the consideration warranted by the familiar canons of construction of statutes will, we contend, show that the intention, and the action of Congress, contemplated the continuance of the right of appeal in this cause. The language is broad and clear enough to warrant the contention that it saves the appeal to the Supreme Court of the United States in cases which might otherwise have been deprived of such appeal by other provisions of the judicial code as to "any act done, or any right accruing or accrued," "or any suit or proceeding" pending at the time of the taking effect of the Act. For the purpose of this application, however, we shall deal only with the right of appeal to the Supreme Court of the United States safeguarded by Section 299 of the judicial code in an equity cause pending in the Court of Appeals of the District of Columbia, on the 1st day of January, 1912, when the Act embodying the judicial code took effect.

It would be an unnecessary parade of learning to recite the canons of construction of statutes, or its decisions respecting them, to the Supreme Court of the United States. They are conveniently summarized in Federal Statutes, Annotated, Vol. 1, pages VIII to CXXX, Statutes and Statutory Construction, with notes.

As this is the first time that Congress has enacted just such a provision as that contained in Section 299 of the judicial code there are no decisions of the Supreme Court of the United States, or of any other court, directly applicable to, and conclusive as to, the question now under consideration.

Some light is afforded by the *obiter dicta* in decisions of the Supreme Court in cases where the right of appeal had been cut off by Act of Congress without any saving clause as to pending cases, for example, in Railroad Company vs. Grant, 98 U. S., 398, decided April 14, 1879, the Supreme Court of the United States, in an opinion, delivered by Mr. Chief Justice Waite, holding that the Act of Congress of February 25, 1879, Chapter 99, Section 4, changing the limit of value necessary for writ of error, or appeal, from the Supreme Court of the District of Columbia to the Supreme Court of the United States, from $1,000 to $2,500, barred appeals or writs of error in pending cases because there was no saving clause in the Act, said:

> "No declaration of any such object on the part of Congress is found in the law; and when, if it had been the intention to confine the operation of what was done to judgments thereafter rendered or to cases not pending, it would have been so easy to have said so, we must presume that Congress meant the language employed should have its usual and ordinary signification, and that the old law should be unconditionally repealed."

As Mr. Chief Justice Waite said, in any such case where Congress desired to save the rights of suitors to an appeal to the Supreme Court, "it would have been so easy to have said so," and in Section 299 of the judicial code Congress *has* said so.

In the light of reason an examination of the judicial code as affected by section 299 shows that it cannot bar appeals covered by the saving clause as in this case.

It is the light of reason, however, rather than the dim reflected light from any decision respecting a statute containing no such saving clause as we invoke in this case in which Section 299 of the judicial code should be read and applied. In the light of reason it is evident that Congress meant to make a broad, and a valuable, reservation in behalf of pending cases when it expressly limited the operation of the Act in this important section. It is not a mere proviso, nor is it an afterthought. It is a separate section and integral part of the Act. The Act itself is the first comprehensive revision of the judiciary statutes which Congress has made, and the importance of its effect upon the rights of suitors was evidently appreciated by Congress, which saw the necessity for safeguarding them in some such manner.

Moreover the provision for this purpose should be interpreted liberally in favor of the suitors desiring the benefit of consideration of their suits by the highest court in the land, and who appealed their cases at a large expense, from the trial court to the Court of Appeals, relying upon the plain letter of the judicial code which gave them, if unsuccessful in that court, the right of appeal to this court, provided their cases were pending January 1, 1912.

It is equally evident that if, as may be claimed, the intention of Congress was simply to preserve the jurisdiction of the Supreme Court over writs of error and appeals in cases actually pending on the first day of January, 1912, in the Supreme Court of the United States itself, and not in any appellate or other court below, Congress could and would have said so in a very few words. The enactment of the judicial code was the result of the labors of experts

in the Commission to Revise and Codify the laws authorized by the Act of June 4, 1897, under additional powers granted it by the Act of March 3, 1899, and afterwards was examined and passed upon by a special joint committee of Congress on the revision of the laws, appointed under public resolution No. 58 of the 60th Congress, 2d session. There was ample time for deliberation and ample knowledge on the part of those who framed the draft of the Act as it was presented to Congress. The Congressional Record shows that it had consideration in both Houses.

If Congress meant to preserve only appeals pending in the Supreme Court it should and would have said so, as in former acts, in explicit terms.

There were in the statutes of the United States provisions enacted from time to time by Congress to save the jurisdiction of the Supreme Court of the United States as to cases pending in that Court which otherwise would have been shut out from its appellate jurisdiction by the operation of changes in the statutes. And these, of course, were perfectly familiar to the Statutory Commission and to the special joint Committee of Congress and must be presumed to have been known to the Senate and House. Certainly they were known to the lawyers in those bodies.

One of these is in the Act of March 3, 1873, Chapter 223 (17 Stat. L., 485), as follows:

> "Nothing in the Act of March 3, 1873, relating to the circuit and district courts for the middle and northern districts of Alabama, shall affect the jurisdiction of the Supreme Court to hear and determine any cause or proceeding pending in said court at the date of said act on writ of error or appeal from the district courts of either of said districts."

This is so simple and so sufficient that it is obviously suitable for such a purpose.

A much more important provision of the same kind is that in the joint resolution of March 3, 1891, to provide for the organization of circuit courts of appeals created by the Act of March 3, 1891, and is as follows:

(26 Stat. L., 1115.)

> "And be it further resolved, that nothing in said Act shall be held or construed in any wise to impair the jurisdiction of the Supreme Court or any circuit court in the United States in any case now pending before it, or in respect of any case wherein the writ of error or the appeal shall have been sued out or taken to any of said courts before the first day of July, Anno Domini, 1891."

Another similar saving clause is found in the Act of January 20, 1897 (29 Stat. L., 492), to withdraw from the Supreme Court jurisdiction of criminal cases, not capital, and confer the same on the circuit courts of appeals as follows:

> "Provided, that no case now pending in the Supreme Court or in which an appeal or writ of error shall have been taken or sued out before the passage of this Act shall be thereby affected, but in all such cases the jurisdiction of the Supreme Court shall remain, and such Supreme Court shall proceed therein as if this Act had not been passed."

With the language of these provisos before them the makers of the judicial code as it now stands on the statute books, if their intention had been to limit the benefits of the saving clause to cases actually pending in the Supreme Court of the United States would certainly have said so in

language similar to that which Congress had used before for such a purpose.

It would be instructive to examine the language of Section 299 in several ways. First, omitting the parenthetical clause with respect to appellate courts so that it will read "that the repeal of existing laws, or the amendments thereof, embraced in this Act, shall not affect any act done, or any right accruing or accrued, or any suit or proceeding pending at the time of the taking effect of this Act, but all such suits and proceedings for causes arising or acts done prior to such date, may be commenced and prosecuted within the same time, and with the same effect, as if said repeal or amendments had not been made."

Without the parenthetical clause it seems apparent that the section is intended to save the jurisdiction of appeal of the Supreme Court in all cases whatsoever originating before the first of January, 1912, the time of the taking effect of the act. It is equally apparent that the parenthetical clause is not controlling, but was inserted to make certain that no case should be omitted by construction from the benefit of the saving clause.

The parenthetical clause, which is as follows:

> "including those pending on writ of error, appeal, certificate, or writ of certiorari, in any appellate court referred to or included within the provisions of this Act,"

makes a very definite provision for saving the appellate jurisdiction of the Supreme Court in cases pending in the circuit courts of appeals of the United States and the Court of Appeals of the District of Columbia at the time of the taking effect of the Act.

If Congress had said that, as in former Acts, this saving clause should apply only to cases pending in the Supreme

Court of the United States we should, of course, not be asking the court for this appeal.

Section 299 unnecessary for any other purpose than that suggested in this case.

It was unnecessary for Congress to enact a saving clause to preserve jurisdiction in the circuit courts of appeals, or the Court of Appeals of the District of Columbia, as to cases pending there because their appellate jurisdiction was not affected by the judicial code. The right of appeal from the district courts to the circuit courts had been abolished, and the right of appeal from the district and circuit courts to the circuit courts of appeals had been provided, by the Act of March 3, 1891, for the creation of the circuit courts of appeals. Section 299 of the judicial code is not required to preserve the cases which might have been pending in the circuit courts at the time of the taking effect of the Act embodying the judicial code, for such cases are expressly covered by Section 290 of the judicial code as follows:

> "Sec. 290. All suits and proceedings pending in said circuit courts on the date of the taking effect of this Act, whether originally brought therein or certified thereto from the district courts, shall thereupon and thereafter be proceeded with and disposed of in the district courts in the same manner and with the same effect as if originally begun therein, the record thereof being entered in the records of the circuit courts so transferred as above provided."

It is evident from the most casual inspection of the statute itself that the judicial code is intended primarily and chiefly to bring about the consolidation of the circuit courts with the district courts, and provision for all cases in the

circuit courts is carefully made in Section 290 so as to secure to litigants all the rights of appeal and otherwise, which they had at the time of the enactment of the code.

The rest of the code, so far as appellate jurisdiction is concerned, is practically a re-enactment of existing law with the exception of the provision for writs of error and appeal from the Court of Appeals of the District of Columbia contained in Section 250, which exception as modified by the provisions of Section 299 cuts off writs of error and appeals in the cases that turn on a jurisdictional limit of the value of the matter in controversy, unless they originated before January 1, 1912.

Let us paraphrase Section 299, so as to make it apply directly to the present case: It would then read: The repeal of existing laws, or the amendments thereof, embraced in this Act, shall not affect the suit of the Washington Home for Incurables versus American Security and Trust Company, *et al.*, pending on appeal in the Court of Appeals of the District of Columbia at the time of the taking effect of this Act, but such suit shall be prosecuted with the same effect as if said repeal or amendments had not been made.

We have a right to say that we could not prosecute this suit "with the same effect" as if said repeal or amendment had not been made unless we have the same full access to the appellate jurisdiction of the Supreme Court of the United States which we had when we brought the case on appeal from the Supreme Court of the District of Columbia to the Court of Appeals of the District of Columbia, an "act done" which might not have been done if we had not believed that we were thereby acquiring a "right accruing" to continue on as with similar cases before, to the judgment of the highest court in the land. We might not have incurred the expense or the delay involved in an appeal from the Supreme Court of the District of Columbia to the Court

of Appeals of the District of Columbia, but for our expectation that we would be able, if necessary, to go beyond that court and obtain a final hearing in the Supreme Court of the United States. It is well known that suitors in the District of Columbia would be governed in their determination of the question whether to sue or not, or defend or not (according to circumstances), even if they believed the decision of the Court of Appeals would be adverse, by the fact that they would then have the right to go to the Supreme Court. They would deliberately incur the expense with that last appeal in store for their hopes. It has always been held to be the duty of the courts to give a liberal construction to the provisions in statutes designed to save the rights of suitors. It is apparent that Congress meant to provide a saving clause for the benefit of suitors far broader in extent than had been previously employed in similar cases. This much is apparent on the most cursory examination of Section 299. If there is any doubt about it this doubt should be resolved in favor of the suitors. Since the intention of Congress to benefit them is clear and unequivocal, it ought not to be defeated by arbitrary construction, or the claim that the most apt words necessary were not used.

In cutting off a privilege of appeal enjoyed by the National Capital for more than a century, Congress gave days of grace at least as to pending cases.

The right of an appeal in an equity cause or to a writ of error in a cause at law is, of course, simply a statutory right. But it *is* a statutory right and a very valuable one of which suitors ought not to be deprived except by the unequivocal and decisive provision of an act of Congress. If there were no saving clause in the judicial code

respecting pending cases suitors would have to admit that their rights in this respect had been cut off by Congress in its wisdom, and could only acquiesce, but when Congress has expressly provided for the protection of this precious right which suitors in this particular case certainly enjoyed at the time the case was begun and while it was pending in the court of appeals until the 1st of January, 1912, they ought to have the advantage of the consideration shown them by Congress.

To sum up:

The saving section, Sec. 299, expressly provides, in terms, that the repeal of existing laws shall not affect "any * * * suit or proceeding * * * pending * * * on appeal * * * in any appellate court, referred to or included within the provisions of this Act."

This suit was pending on appeal in the Court of Appeals of the District of Columbia, January 1, 1912, when the Act went into effect. The Court of Appeals is an appellate court referred to and included within the provisions of the Act, to which cases are brought up "on writ of error, appeal, certificate, or writ of certiorari." This suit is, therefore, one which is strictly within the letter of the saving section. To hold otherwise, by denying the present application for an appeal, will be to disregard and do violence to a plain, unambiguous statutory provision. If it be contended that the Act does not mean what it says, the burden to so show is not on this applicant, but on the appellees if they shall oppose the granting of the application. Certainly this court will not of its own volition, ignore the statute, by denying a right plainly given by it, or seek for reasons to distort the meaning of words so plain and simple that no one conversant with the English language can possibly misunderstand them.

If it be said that the saving section applies only to ap-

peals which were determined below before January 1, 1912, the answer is twofold, first, that the Act does not say so, and this court has no power to amend the statute, and second, if it had been the intention to save only appeals which were pending in this court on January 1st, Congress would have so expressed itself, and in language similar to that used in former Acts.

For more than a century suitors in the District of Columbia have enjoyed the privilege of going to the Supreme Court of the United States as the tribunal of last resort in causes such as the present one. In the judicial code that privilege is continued as to citizens of Hawaii and Porto Rico. It seems most natural that in cutting off this ancient liberty of the people of the National Capital, Congress would have shown them a last measure of grace in saving to them the opportunity to appeal in cases arising before the new judicial code went into effect. It is for Congress to say, since the appellate jurisdiction of the Supreme Court of the United States is wholly statutory and may be increased or diminished at any time and in any manner, at the will of Congress. If it has chosen to continue appellate jurisdiction in cases similar to ours although it has determined to cut off that jurisdiction as to cases not pending January 1, 1912, it is not for the Supreme Court to say that it will not grant the appeal.

HENRY B. F. MACFARLAND,
CHARLES COWLES TUCKER,
J. MILLER KENYON,
For the Applicant.

WASHINGTON HOME FOR INCURABLES *v.* AMERICAN SECURITY AND TRUST COMPANY.

VERMILLION *v.* BALTIMORE AND OHIO RAILROAD COMPANY.

APPLICATIONS FOR THE ALLOWANCE OF AN APPEAL FROM THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA, AND FOR A WRIT OF ERROR TO THE SAME.

Submitted April 15, 1912.—Decided April 29, 1912.

Section 299 of the Judicial Code of March 3, 1911, 36 Stat. 1087, c. 231, saving suits pending on appeal, does not give the right of appeal from judgments of the Court of Appeals of the District of Columbia in cases covered by the statutes repealed by the Judicial Code and in which the cause of action accrued prior to January 1, 1912, but which were not decided by the Court of Appeals until after that date.

Appeal from 40 Washington Law Reporter, 146, denied.

Writ of error to review 40 Washington Law Reporter, 228, denied.

THE facts, which involve the construction of the provisions of the Judicial Code of March 3, 1911, in regard to appeals to this court from the Court of Appeals of the District of Columbia, are stated in the opinion.

Mr. Henry B. F. Macfarland, Mr. Charles Cowles Tucker and *Mr. J. Miller Kenyon* for petitioner The Washington Home for Incurables:

The saving clause of the Judicial Code, § 299, clearly preserves the right of appeal in this case. Its language would have to be wrested from its evident meaning to bar the appeal.

Giving to the language of § 299 the consideration warranted by the familiar canons of construction of statutes will show that the intention, and the action of Congress,

contemplated the continuance of the right of appeal in this cause.

For the canons of construction of statutes, or decisions respecting them, see summary, 1 Fed. Stat., Ann., pp. VIII to CXXX, on statutes and statutory construction.

In the light of reason an examination of the Judicial Code as affected by § 299 shows that it cannot bar appeals covered by the saving clause as in this case.

If, as may be claimed, the intention of Congress was simply to preserve the jurisdiction of the Supreme Court over writs of error and appeals in cases actually pending on the first day of January, 1912, in the Supreme Court of the United States itself, and not in any appellate or other court below, Congress could and would have said so in a very few words.

If Congress meant to preserve only appeals pending in the Supreme Court it should and would have said so, as in former acts, in explicit terms. For other instances, see Act of March 3, 1873, 17 Stat. 485, c. 223; Act of March 3, 1891, 26 Stat. 1115; Act of January 20, 1897, 29 Stat. 492.

Section 299 is unnecessary for any other purpose than that suggested in this case.

In cutting off a privilege of appeal enjoyed by the National Capital for more than a century, Congress gave days of grace at least as to pending cases.

Mr. Joseph W. Cox and *Mr. John A. Kratz, Jr.*, for petitioner Vermillion:

The plain words of § 299 expressly saves the jurisdiction which this court had under the act of February 9, 1893, 27 Stat. 436.

The section is very comprehensive, and provides that the appeal of existing laws shall not affect: (a) any act done, or any right accruing or accrued; (b) any suit or proceeding pending at the time of the taking effect of this act; (c) any suit or proceeding pending on writ of

error, appeal certificate, or writ of certiorari in any appellate court referred to or included within the provisions of the act at the time of its taking effect.

The act further provides that, "all such suits and proceedings and suits and proceedings for causes arising or acts done prior to such date, may be commenced and prosecuted within the same time, and with the same effect, as if said repeal or amendments had not been made."

The meaning plainly to be deduced from a reading of this section is that Congress was leaving unaffected proceedings under the repealed laws in pending cases, and also proceedings in causes arising, or acts done prior to such date. The words of this section are not ambiguous, but leave the intent of Congress plain, and this court has decided that under such circumstances it will not give construction to an act of Congress. *Dewey* v. *United States*, 178 U. S. 510; *United States* v. *Union P. R. R. Co.*, 91 U. S. 72.

While one of the effects of § 299 is to accomplish just what the Court of Appeals declares it does, the section is far more comprehensive in its effective operation than that ascribed to it by that court.

Congress used the words of this section in their plain and natural meaning, as is clearly shown by the legislative history of the section and its comparison with §§ 5597 and 5599, Rev. Stat. of 1873, from which its language was taken. See the bill as originally reported to the Senate, S. 7031 and to the House, H. R. 23,377; Sen. Report, 388, 61st Cong., 2d Sess. of Special Joint Committee on Revision and Codification of the Laws of the United States.

Where Congress in a subsequent act adopts the provisions of a former act and in the main its language, it must be presumed that Congress intended the provisions of the subsequent law to accomplish the same thing and to have the same force and effect as the earlier law. Es-

pecially is this so where the courts have construed the earlier law, before the enactment of the subsequent law, to be in harmony with the plain meaning of the words employed. *Bechtel* v. *United States*, 101 U. S. 597; *May* v. *County of Logan*, 30 Fed. Rep. 250.

The plain words of the section, its legislative history, and this court's construction of prior laws *in pari materia* all show that the intention of Congress was to save this court's jurisdiction in a case like that at bar.

MR. JUSTICE HOLMES delivered the opinion of the court.

These are applications for the allowance of an appeal and writ of error, respectively. The cases come before the court under the same circumstances as the application for a writ of error just decided. *American Security & Trust Co.* v. *District of Columbia*, *post*, p. 491.

The first named is a bill in equity that was pending in the Court of Appeals on January 1, 1912, and decided on March 4, 1912. The matter in dispute in both, exclusive of costs, exceeds the sum of five thousand dollars. The law before the enactment of the Judicial Code of March 3, 1911, c. 231, 36 Stat. 1087, allowed a writ of error or appeal in such cases, act of February 9, 1893, c. 74, § 8, 27 Stat. 434, 436, and the applicants contend that the appeal and writ of error are rights saved by § 299 of the Code. That section is as follows: "The repeal of existing laws, or the amendments thereof, embraced in this Act, shall not affect any act done, or any right accruing or accrued, or any suit or proceeding, including those pending on writ of error, appeal, certificate, or writ of certiorari, in any appellate court referred to or included within, the provisions of this Act, pending at the time of the taking effect of this Act, but all such suits and proceedings, and suits and proceedings for causes arising or acts done prior to such date, may be commenced and prosecuted within

the same time, and with the same effect, as if said repeal or amendments had not been made." This act took effect when this suit was pending in the Court of Appeals, on January 1, 1912.

The purpose of the act in the matter of appeals from the Court of Appeals of the District was to make a substantial change and to do away with them except in classes of cases of which this is not one. There seems to be little if any more reason for preserving a further appeal in cases then before the Court of Appeals than there is in those in which no writ had been sued out, but the cause of action had accrued before January 1, 1912, which is nothing at all. It must appear clearly, therefore, that this case is saved or it will fall under the general rule. We find no clear expression of such intent. The general provision that the repeal shall not affect any right or suit, is ambiguous and is qualified and explained by the words 'including those pending on appeal,' etc., which suggest that but for them appeals already taken would have fallen. *Baltimore & Potomac R. R. Co.* v. *Grant*, 98 U. S. 398. If express words were thought necessary to save pending appeals, *a fortiori* such words were needed to save appeals not yet taken, and no such words were used. The first part of the section, declaring what shall not happen, is elucidated by the antithetical statement, in the last part, of what shall take place. We gather from that that all suits upon causes of action that arose before January 1 stand alike. We cannot suppose that a suit not yet begun can be taken to this court on the ground that a sum of more than $5,000 is involved, and we are of opinion that the applicant makes no better case. We agree with the Court of Appeals that the act saves jurisdiction when an appeal has been taken, but does not save an appeal for all suits in causes of action accrued before this year.

Leave to appeal and writ of error denied.

AMERICAN SECURITY AND TRUST COMPANY *v.* COMMISSIONERS OF THE DISTRICT OF COLUMBIA.

PETITION FOR A WRIT OF ERROR TO THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA.

Submitted April 15, 1912.—Decided April 29, 1912.

The jurisdiction of this court to reëxamine final judgments or decrees of the Court of Appeals of the District of Columbia under § 250 of the Judicial Code of March 3, 1911, 36 Stat. 1087, c. 231, in cases in which the construction of a law of the United States is drawn in question, does not extend to cases where the act of Congress construed by that court is a purely local law relating to the District of Columbia, but only extends to those having a general application throughout the United States.

In construing a statute the same phrase may have different meanings when used in different connections.

Section 250 of the Judicial Code should be strictly construed, as the intent of Congress was to relieve this court from indiscriminate appeals where the amount involved exceeded $5,000.

All cases in the District of Columbia arise under acts of Congress; and to so construe § 250 of the Judicial Code as to include the case at bar, because the construction of a local street extension act was involved, would largely and irrationally increase the appellate jurisdiction and the statute will not be construed so as to include such cases even if within its literal meaning. *Holy Trinity Church* v. *United States*, 143 U. S. 437.

Writ of error to review 40 Washington Law Reporter, 34, denied.

THE facts, which involve the construction of the provisions of the Judicial Code of March 3, 1911, in regard to appeals to this court from the Court of Appeals of the District of Columbia, are stated in the opinion.

Mr. Wm. G. Johnson for petitioner:

The jurisdiction of this court to review the judgment of the Court of Appeals is based upon § 250, Judicial Code, providing that any final judgment or decree of the Court

of Appeals of the District of Columbia may be reëxamined and affirmed, reversed, or modified by this court upon writ of error or appeal, when the construction of any law of the United States is drawn in question by the defendant.

Upon this provision of the statute but two questions can arise affecting the jurisdiction of this court; namely, (1) was the construction of the above-recited statutes drawn in question by the defendant, and (2) are those statutes within the descriptive words "any law of the United States," as those words are used in § 250 of the Judicial Code.

In this case the construction of the statutes was drawn in question by the defendants.

The statute is, itself, an instruction to the jury, and the instruction objected to by defendants and the one asked by defendants, of necessity, drew in question the construction of the statute.

The words "any law of the United States" embrace the statutes, the construction of which was drawn in question in this case.

The two acts of Congress, the construction of which was drawn in question in this case, are laws of the United States. Every legislative act of the Congress, whether local or general, is a law of the United States, and is so defined in the Constitution.

While it is freely conceded that the word "any" like other words, may have a greater or less extensiveness, according to the intent with which it is used, still, in general, it embraces each and every object in the class to which it is applied. *United States* v. *Palmer*, 3 Wheat. 610; *Collector* v. *Hubbard*, 12 Wall. 1.

Uniformity of statutory construction is not the object or effect of the statute.

The appellate jurisdiction conferred upon this court by clause 6 of § 250, novel in the legislation of Congress on the subject of appellate jurisdiction, and extending to but

one court in the entire judicial system of the Nation, cannot, by any possibility, even tend to produce uniformity of decisions as to the construction of laws of the United States of national application. Being wholly unadapted and incompetent to produce uniformity of decision, the clause in question cannot properly be said to have been framed with that object, in the absence of any such declared purpose in the statute, and the inference, that the clause should be confined to general statutes of the United States as distinguished from those of purely local application, based, as it is, upon that supposed purpose of the legislature, is without foundation. See *Parsons* v. *Dist. of Col.*, 170 U. S. 45; *Balt. & Pot. R. R.* v. *Hopkins*, 130 U. S. 210.

Nor is the relief of this court involved; whether this was the intention of the act admits of serious question. No such purpose is declared in the statute and it is not to be inferred from provisions expressly conferring additional appellate jurisdiction upon this court.

MR. JUSTICE HOLMES delivered the opinion of the court.

This is an application for a writ of error to the Court of Appeals of the District of Columbia under the new Judicial Code. Act of March 3, 1911, c. 231. 36 Stat. 1087. The Court of Appeals denied the writ. Thereupon application was made to the Chief Justice. He referred it to the court. Briefs were called for and one was submitted by the applicants. It now is to be decided whether the writ should be allowed.

By § 250 of the Code any final judgment or decree of the Court of Appeals may be reëxamined 'in the following cases: . . . Sixth. In cases in which the construction of any law of the United States is drawn in question by the defendant.' This is the clause relied upon. The case was a suit for the condemnation of land brought by the Commissioners under a special act of

February 6, 1909, c. 75, 35 Stat. 597, for the extension of New York Avenue. By that act the procedure was to follow subchapter one of chapter fifteen of the District Code, which provides among other things for the separate assessment of benefits. Act of March 3, 1901, c. 854. 31 Stat. 1189, 1266. The jury were instructed that by the extension of the avenue they were to understand its establishment, laying out and completion for all the ordinary uses of a public thoroughfare. The applicants contended that, as there was no present provision for grading, paving, laying water mains or sewers, or otherwise opening the avenue to traffic, any advantage that would accrue from such improvements if made must be disregarded; and so they say that they drew the construction of the special act and perhaps of the Code in question, and that these were laws of the United States.

We do not stop to consider whether any question of construction properly can be said to have been raised, rather than a question of general law in the application of words that were colorless so far as the point in controversy was concerned. It might not be just to assume that the general averment of the application was not justified by exceptions more clearly turning on the construction of the local laws than the example given in the brief. The ground on which the writ was refused by the Court of Appeals was that the words quoted from § 250 should not be construed to apply to the purely local laws of the District, and with that view we agree.

Of course there is no doubt that the special act of Congress was in one sense a law of the United States. It well may be that it would fall within the meaning of the same words in the third clause of the same section: 'Cases involving the constitutionality of any law of the United States.' *Parsons* v. *District of Columbia*, 170 U. S. 45. But it needs no authority to show that the same phrase may have different meanings in different connections.

Some reasons for strict construction apply here. We are entirely convinced that Congress intended to effect a substantial relief to this court from indiscriminate appeals where a sum above $5,000 was involved, and to that end repealed the former act. See *Carey* v. *Houston & Texas Central Ry. Co.*, 150 U. S. 170, 179. *Cochran* v. *Montgomery County*, 199 U. S. 260, 272, 273. But all cases in the District arise under acts of Congress and probably it would require little ingenuity to raise a question of construction in almost any one of them. If, then, the words have the meaning given them by the applicants the appellate jurisdiction of this court has been largely and irrationally increased. We believe Congress meant no such result.

A well-known example of construing a statute not to include a case that indisputably was within its literal meaning, but was believed not to be within the aim of Congress, is *Church of the Holy Trinity* v. *United States*, 143 U. S. 457; we may refer further to *Cochran* v. *Montgomery County, ubi supra*. In the case at bar if the words 'construction of any law of the United States' are confined to the construction of laws having general application throughout the United States the jurisdiction given to this court by § 250 is confined to what naturally and properly belongs to it. If they are construed the other way it would have been less arbitrary to provide that every question of law could be taken up. That they were not to be understood as the applicant contends is to be inferred not only from the sense of the thing but from clause first: 'In cases where the jurisdiction of the trial court is in issue,' with provision for certifying that question alone. It is difficult to imagine a case in which the jurisdiction of the trial court is in issue where the construction of a special law of the United States would not be drawn in question.

Writ of error denied.